

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

LESHANE J. HOLMES,

Plaintiff,

No. CIV S-04-2377 LKK KJM P

vs.

JEANNE S. WOODFORD, et al.,

Defendants.

ORDER

Plaintiff is a state prisoner proceeding pro se. Plaintiff seeks relief under 42 U.S.C. § 1983 and has requested leave to proceed in forma pauperis under 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 72-302 under 28 U.S.C. § 636(b)(1).

Plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis will be granted.

Plaintiff is required to pay the statutory filing fee in effect at the time of filing of this action, \$150.00. 28 U.S.C. §§ 1914(a), 1915(b)(1). An initial partial filing fee of \$1.29 will be assessed by this order. 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account.

1 These payments will be forwarded by the appropriate agency to the Clerk of the Court each time  
2 the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.  
3 § 1915(b)(2).

4 The complaint states a cognizable claim for relief under 42 U.S.C. § 1983 and 28  
5 U.S.C. § 1915A(b). If the allegations of the complaint are proven, plaintiff has a reasonable  
6 opportunity to prevail on the merits of his First Amendment retaliation claim against defendants  
7 Teer, Baker, Ponce, Ward, Vicente, Baskerville, Castillo, Hooper and Hernandez. Therefore, the  
8 court will order service of process upon these defendants. With respect to the other defendants  
9 and claims identified in plaintiff's complaint, plaintiff fails to state a claim upon which relief can  
10 be granted.

11 Plaintiff has requested the appointment of counsel. The United States Supreme  
12 Court has ruled that district courts lack authority to require counsel to represent indigent  
13 prisoners in § 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In  
14 certain exceptional circumstances, the court may request the voluntary assistance of counsel  
15 under 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v.  
16 Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). In the present case, the court does not  
17 find the required exceptional circumstances. Plaintiff's request for the appointment of counsel  
18 will therefore be denied.

19 In accordance with the above, IT IS HEREBY ORDERED that:

20 1. Plaintiff's request for leave to proceed in forma pauperis is granted.

21 2. Plaintiff is obligated to pay the statutory filing fee of \$150.00 for this action.

22 Plaintiff is assessed an initial partial filing fee of \$1.29. All fees shall be collected and paid in  
23 accordance with this court's order to the Director of the California Department of Corrections  
24 filed concurrently herewith.

25 3. Service is appropriate for the following defendants: Teer, Baker, Ponce, Ward,  
26 Vicente, Baskerville, Castillo, Hooper and Hernandez.

1           4. The Clerk of the Court shall send plaintiff nine USM-285 forms, one  
2 summons, an instruction sheet and a copy of the complaint filed November 5, 2004.

3           5. Within thirty days from the date of this order, plaintiff shall complete the  
4 attached Notice of Submission of Documents and submit the following documents to the court:

5                   a. The completed Notice of Submission of Documents;

6                   b. One completed summons;

7                   c. One completed USM-285 form for each defendant listed in number 3  
8 above; and

9                   d. Ten copies of the endorsed complaint filed November 5, 2004.

10           6. Plaintiff need not attempt service on defendants and need not request waiver of  
11 service. Upon receipt of the above-described documents, the court will direct the United States  
12 Marshal to serve the above-named defendants under Federal Rule of Civil Procedure 4 without  
13 payment of costs.

14           7. Plaintiff's November 5, 2004 request for the appointment of counsel is denied.

15 DATED: May 16, 2005.

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18 UNITED STATES MAGISTRATE JUDGE  
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NOTICE OF SUBMISSION  
OF DOCUMENTS

\_\_\_\_\_/

Plaintiff hereby submits the following documents in compliance with the court's  
order filed \_\_\_\_\_:

\_\_\_\_\_ completed summons form

\_\_\_\_\_ completed USM-285 forms

\_\_\_\_\_ copies of the \_\_\_\_\_  
Complaint/Amended Complaint

DATED:

\_\_\_\_\_  
Plaintiff